

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-013746

05/08/2017

HONORABLE LORI HORN BUSTAMANTE

CLERK OF THE COURT
T. Nosker
Deputy

JOSEPH MOMOT, et al.

KRYSTLE DELGADO

v.

SILKWORTH MANOR L L C, et al.

ADAM E HAUF
RANDY NUSSBAUM

MINUTE ENTRY

The court has reviewed and considered the following pleadings:

- Defendant Silkworth Manor, L.L.C.'s Motion to Stay and Waive Supersedeas Bond
- Response to Defendant Silkworth Manor, L.L.C.'s Motion to Stay and Waive Supersedeas Bond
- Defendant Silkworth Manor, L.L.C.'s Reply to Plaintiff's Response to Motion to Stay and Waive Supersedeas Bond
- Motion to Strike Defendant Silkworth Manor L.L.C.'s Reply to Plaintiff's Response to Motion to Stay and Waive Supersedeas Bond
- Defendant Silkworth Manor L.L.C.'s Reply to Plaintiff's Motion to Strike Defendant Silkworth Manor, L.L.C.'s Reply to Plaintiff's Response to Motion to Stay and Waive Supersedeas Bond

“[W]hen a superior court stays its judgment pending appeal, it nevertheless is entitled to take appropriate action to preserve the status quo or the effectiveness of its judgment.” *Wells Fargo Bank N.A. v. Rogers*, 239 Ariz 106, 366 P.3d 583, 587 (App. 2016)

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A.R.S. § 12-2108(A) sets forth the amount of the bond that is necessary for appeal:

If a plaintiff in any civil action obtains a judgment under any legal theory, the amount of the bond that is necessary to stay execution during the course of all appeals or discretionary reviews of that judgment by any appellate court shall be set as the lesser of the following:

1. The total amount of damages awarded excluding punitive damages.
2. Fifty per cent of the appellant's net worth.
3. Twenty-five million dollars.

“Damages . . . are compensation for actual injury.” *City Ctr. Exec. Plaza, LLC v. Jantzen*, 237 Ariz. 37, 42, 344 P.3d 339, 344 (App. 2015). Attorney fees are not included in the amount of “damages awarded” for purposes of establishing the total amount of damages awarded. *Id.*

“[I]f an appellant proves by clear and convincing evidence that the appellant is likely to suffer substantial economic harm if required to post bond in an amount required under subsection A, the trial court may lower the bond amount to an amount up to the full amount to an amount that will not cause the appellant substantial economic harm.” A.R.S. § 12-2108(C). *See also* Ariz. R. Civ. App. P. 7(a)(5)(B). “The bond should protect the status quo at the time of judgment because ‘[a] judgement creditor’s right to secure his money judgment during the appeal process is no less important than the judgment debtor’s right to be free from execution while exercising his appellate rights.’” *Salt River Sand and Rock Co. v. Dunnevant*, 213 P.3d 251, 258, 222 Ariz. 102 (App. 2009) (*quoting Bruce Church, Inc. v. Superior Court*, 160 Ariz. 514, 517, 774 P.2d 818, 821 (App. 1989)).

In the present case, Silkworth Manor appellant requests staying enforcement of the default judgment without posting a supersedeas bond pending the outcome of the appeal. Plaintiff, in part, asserts that it would be unjust to waive or reduce the bond because there would be no security to protect the judgment if Silkworth Manor does not prevail on their appeal. Plaintiff further asserts the supersedeas bond should be no less than \$71,065.60 (\$28,026.80 in damages plus \$43,026.80 in attorney fees and costs).

The total amount of damages awarded is less than twenty-five million dollars and the actual net worth of appellant is not clear from the affidavit provided. Attorney fees are not included in the calculation of the total amount of damages awarded; thus, the total amount of damages awarded is \$28,026.80. The amount of the bond shall therefore be set at \$28,026.80.

Plaintiff has a right to secure their money judgment during the appellate process. If the court were to waive or reduce the bond, Plaintiff would be incurring additional time and expense with no security in the judgment in the event that Silkworth Manor does not prevail. Silkworth Manor

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provided an affidavit regarding assets, income and expenses but failed to provide any other documentation regarding the company's value, income or expenses. There is also no mention in the affidavit or the motion regarding any attempt to obtain the necessary funding to secure the bond. Appellant has failed to demonstrate by clear and convincing evidence that appellant is likely to suffer substantial economic harm if required to post the bond; therefore, the court declines to lower the amount of the bond.

IT IS ORDERED granting Defendant John Mulligan's Motion to Stay Enforcement of the Judgment Pending the Appeal.

IT IS FURTHER ORDERED denying the Motion to Waive the Supersedeas Bond.

IT IS FURTHER ORDERED setting the amount of the supersedeas bond at \$28,026.80.

IT IS FURTHER ORDERED denying Plaintiff's Motion to Strike Defendant Silkworth Manor L.L.C.'s Reply to Plaintiff's Response to Motion to Stay and Waive Supersedeas Bond.